

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

MFA.No. 674 of 2001(B)

OPMV.8/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA

APPELLANT:

1. MARIKUTTY, W/O.VARKEY, PUTHUMATTATHIL HOUSE,
EAST KALOOR KARA, KUMARAMANGALAM VILLAGE.
2. JOSE, S/O.VARKEY, DO.
3. MOLLY, D/O.VARKEY, DO. DO.
4. FRANCIS, S/O.VARKEY, DO. DO.
5. GIGI, D/O.VARKEY, DO. DO.

BY ADV. SRI.RAJU K.MATHEWS

RESPONDENTS:

1. GOGI, S/O.ISAC, CHUNDATTU HOUSE,
KULAPPURAM KARA, KADAVOOR VILLAGE,
MUTATTUPUZHA.
2. JOSE SEBASTIAN, MUNDACKAL HOUSE,
MUVATTUPUZHA KARA, MUVATTUPUZHA.
3. THE BRANCH MANAGER, NEW INDIA ASSURANCE COMPANY,
MUVATTUPUZHA.

BY ADV. SRI.PAUL MATHEW (PERUMPILLIL)
SRI.ANIL GEORGE
SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 17.12.2007, THE COURT ON 17/12/2007 DELIVERED THE
FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 674 OF 2001

Dated this the 17th day of December, 2007

JUDGMENT

Koshy, J.

A 54 year old man sustained fatal injuries in a motor accident. His wife and four children applied for compensation alleging that the accident occurred due to the negligent driving of the vehicle by the first respondent. The above vehicle was owned by the second respondent and insured by the third respondent. Total amount claimed is Rs.3,30,000/-. The Tribunal awarded only Rs.1,78,300/- as compensation. The dispute is regarding the quantum of compensation only.

2. The deceased was a manual worker, employed on daily wages. According to the Tribunal, his average daily wage was only Rs.80/- and even if the average wage is Rs.80/-, his monthly income can be assessed as Rs.2,100/-, as normally a manual worker will get 26 days work in a month. It is argued that in 1996 in Kerala a manual labourer will get more than Rs.100/- per day and even monthly wages fixed for a labourer is more than Rs.100/- per day. It is the claim of the petitioner that his monthly income is Rs.2,614/-.

He was maintaining a large family consisting of his wife and four children. He was the sole bread winner of the family. The Tribunal has taken 11 as the multiplier. If his monthly income is Rs.2,100/-, after deducting one-third, the loss of dependency to his family is Rs.1,400/- per month. Therefore, loss of dependency will be $1400 \times 12 \times 11 = 1,84,800$. The Tribunal has granted only Rs.1,40,800/- on this count. Therefore, the claimants will be entitled to only Rs.44,000/- over and above the amount decreed by the Tribunal. The above amount of Rs.44,000/- should be deposited by the third respondent Insurance Company with 7.5% interest from the date of application till the date of deposit. On deposit of the above amount, 50% will be disbursed to the first appellant widow and the balance in equal will be disbursed to appellants 2 to 5. The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.674 OF 2001

JUDGMENT

17.12.2007